

The Trial of Momcilo Krajisnik

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The trial of Momcilo Krajisnik tells us much about the war in Bosnia-Herzegovina and about the general concept of international justice. The break-up of Yugoslavia was a shock to Europeans who had lived peacefully for forty-five years. The fighting in Slovenia, Croatia, and Bosnia-Herzegovina was the first major conflict on the European continent since the end of World War II. Close proximity meant that western powers took a larger interest in the outcome than they did in wars on other continents. It meant that the normally passive West played a significant role in igniting the conflict and fanning its flames.⁽¹⁾ Likewise, the close proximity of the fighting to large cities in Western Europe meant that media coverage was noticeably greater than for the civil war in Rwanda, for example. In the case of Slovenia and Croatia, journalists could hop onto a train from Vienna in the morning and show up at the battle front by late afternoon.⁽²⁾ Greater media coverage meant that Western Europeans could watch the conflicts on their televisions nightly and read about them daily in their newspapers; they had the opportunity to feel like spectators and take sides in fighting which they felt they understood.

For many Western Europeans, understanding the civil war in Yugoslavia meant demonizing the Serbs and victimizing the other nationalities; that was the view presented by the media and that was the view which was easiest to believe. The traditional version of the war tells that Serbs planned to commit genocide against other nationalities in order to take away their land. The version told by the Prosecution's Pre-Trial Brief in the Krajisnik case goes something like this: Radovan Karadzic and some other Serbs got together and formed the Serbian Democratic Party (known by the initials SDS), which advocated carving an ethnically-pure Serbian region out of Bosnia. After the election in 1990, the SDS put together a plan to create an ethnically-pure Serbian region which required killing

or forcibly removing non-Serbs, especially Muslims. The Prosecution points to Karadzic's Six-Point Plan as proof. Then, when the time was right, the Bosnian Serbs put their plan into practice.⁽³⁾

Of course, this version of the history is inaccurate and ignores much of what happened in Bosnia before and during the war. It ignores, for example, the events of World War II, in which the Croats and Muslims committed genocide against the Serbs.⁽⁴⁾ The post-World War II Communist regime of Tito played down the atrocities committed by Croats and Muslims against the Serbs for its own political purposes, which resulted in the Croats and Muslims never coming to terms with their past nor apologizing for it. It was no surprise, therefore, when the Muslims and Croats claimed power in Bosnia after the first free election in 1990 that Serbs became nervous that they were going to become the victims of another genocide.⁽⁵⁾

The elections of November and December 1990 were, in fact, the initial cause of the civil war in Bosnia. In the republic's first multi-party free election, the leading parties were drawn along ethnic lines. The SDS, as mentioned, was a Serbian party. The SDA (Party of Democratic Action) was a Muslim party, and the HDZ (Croatian Democratic Union) was a Croatian party.⁽⁶⁾ The candidate who won the most votes for the Presidency was from the SDA, a Muslim named Fikret Abdic. Abdic, in fact, was the only candidate who was popular with all three ethnic groups. He had been imprisoned by the former regime and was viewed as anti-Communist at a time when Communism was very unpopular. Abdic, however, was talked into giving up the post of President to Alija Izetbegovic in exchange for choosing the Interior Minister. Probably, no other decision was more disastrous at that time.⁽⁷⁾ Whereas Abdic was not a practicing Muslim and was well-liked by everyone in Bosnia, Izetbegovic was a Muslim fundamentalist and a fanatic; he had written

two books--*Islamic Declaration* and *Islam Between East and West*--and was jailed on two occasions for his militant Islamic activities.⁶⁸ At one of the largest public rallies of the SDA, in September 1990, 200,000 Muslims gathered, hundreds were waving green Islamic flags and dressed in Arab robes. Some were shouting "Long Live Saddam Hussein" and "Kill Vuk" (Vuk Draskovic, a Serbian opposition party leader).⁶⁹

The first shots fired in Bosnia were fired by Muslims. It was in March 1992 at a Serbian wedding in Sarajevo. As was the custom at the time, some of the guests waved flags after the wedding ceremony, while the families and guests celebrated outdoors. Several shots were fired by unseen shooters at the wedding party, killing the father of the bride and wounding the Serbian priest. It was learned later that the two men who fired the shots were Muslims who had prior criminal records. For a long time, Izetbegovic's government denied that Muslims had fired the shots.⁷⁰

After the incident at the wedding celebration, Serbs cordoned off the streets of Sarajevo around the place where the wedding had taken place. The Croats and Muslims responded by putting up barricades throughout the rest of Sarajevo to cordon off their neighborhoods. It was the first time that armed Muslims were seen patrolling the streets. Within a few days, the process of setting up barricades to divide areas up ethnically spread across all of Bosnia and Hercegovina.⁷¹

That part of the story is rarely told and rarely remembered. Instead, the news media version of Serbian aggressors and Muslim victims is the one which gets retold. It follows naturally then that the post-war solutions to the conflicts and the peace agreements that were imposed were detrimental to the Serbs' aspirations and highly favorable to the demands of other national groups. In Croatia, for example, more than 200,000 Serbs were expelled or fled from the Krajina region, in which Serbs had lived for centuries, because Croatia demanded that area.⁷² In Bosnia-Hercegovina, the Dayton agreement required the Serbian part of that constructed nation to be less than 49% of the land area. As a result, suburbs of Sarajevo and other large swaths of land

were given over to the Muslim-led government, and Serbs who lived there were forced to flee.⁷³

In spite of promises of justice by head prosecutor Carla Del Ponte and others, this viewpoint of Serbian demons and Muslim and Croatian victims has carried over to the International War Crimes Tribunal for former Yugoslavia (ICTY) which holds court in the Hague, Holland. According to the ICTY website, the objectives of the Tribunal are:

- to bring to justice persons allegedly responsible for serious violations of international humanitarian law
- to render justice to the victims
- to deter further crimes
- to contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia.⁷⁴

The stated purpose of the ICTY is to bring to justice all of those who committed war crimes in the Balkans during the 1990's, but the vast majority of the men and women indicted by the ICTY are Serbs.⁷⁵ In fact, in the first five years of its existence, virtually all of the defendants were Serbs.⁷⁶ In addition, the sentences imposed on Serbian government officials are often lengthy, while officials from the Muslim government of Bosnia or the government of Croatia remain largely unindicted. Milan Babic, for example, was the President of the Republic of Serbian Krajina during the early years of the war. He was handed a thirteen-year prison sentence, in spite of having had a plea-bargain agreement with the Prosecution for a sentence of less than eleven years in exchange for testifying against former President of Serbia Slobodan Milosevic.⁷⁷ By contrast, Croatian President Franjo Tudjman and Bosnian Muslim leader Alija Izetbegovic died in bed of natural causes long after the war ended without ever having to face indictment for war crimes.⁷⁸

Typical of the cases before the Tribunal, therefore, is the case against Momcilo Krajisnik. He is a Serb who held a public post and he is charged with war crimes. Krajisnik was the speaker of the Serbian Assembly of the Serbian Republic of Bosnia, (usually referred to as *Republika Srpska* or RS). He did not command an army. He did not sign any papers ordering the deaths of anyone. He did not make any

outlandish statements to crowds or to the news media demanding death for Muslims or Croats. He only had authority over his secretary and one or two other people who worked in his office.⁸³ Yet he on trial.

The Prosecution's indictment against him accuses him of "Genocide, Complicity In Genocide, Extermination, Murder, and Willful Killing" (Counts 1-6), "Persecutions" (Count 7), and "Deportation, Inhumane Acts" (Counts 8-9).⁸⁴ The Indictment alleges that Krajisnik had "Individual Criminal Responsibility,"⁸⁵ which is understood at the ICTY to mean he participated in what is termed a "Joint-Criminal Enterprise" (JCE). More specifically, article 7(1) of the ICTY statute says, "A person who planned, instigated, ordered, committed, aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 5 of the present statute, shall be individually responsible for the crime."⁸⁶

In order to back up its argument that Krajisnik was more than just the Speaker of the Assembly (i.e., similar to the Speaker of the House in the United States), the Prosecution alleges that Krajisnik was "a leading member of the Serbian Democratic Party of Bosnia and Herzegovina...was a member of the National Security Council of the so called (sic) Serbian Republic of Bosnia and Herzegovina...served on the expanded Presidency of the Serbian republic (sic) from the beginning of June 1992 until 17 December 1992...was a member of the Supreme Command of the armed forces of the Serbian republic." (sic)⁸⁷ Although at first glance this list might suggest that he had an authoritative role in the government, in the three bodies mentioned--the Serbian Democratic Party, the National Security Council, and the expanded Presidency--it should be noted that he was a member of the Main Board of the SDS, not the leader; he was one of eight members of the National Security Council and was not the leader or the decision-maker; and he was one of five members of the expanded Presidency. The actual power in all three of these organizations rested with one man--Radovan Karadzic--who was also the President of RS.

Anticipating this criticism of the Indictment, the

Prosecution goes to pains to create the image of a close relationship between Radovan Karadzic and the accused, Momcilo Krajisnik. For example, the indictment states, "Momcilo Krajisnik is a long-standing associate of Radovan KARADZIC... Together with Radovan KARADZIC, Momcilo KRAJISNIK served on a number of SDS bodies and committees."⁸⁸ "Momcilo KRAJISNIK, together with Radovan KARADZIC and other members of the SDS, served on the expanded Presidency...Momcilo KRAJISNIK, along with Radovan KARADZIC and other members of the SDS was a member of the Supreme Command..."⁸⁹ Further on it alleges, "Momcilo KRAJISNIK, acting individually or in concert with Radovan KARADZIC and others, participated in the below-charged crimes..."⁹⁰ the Bosnian Serb leadership, including Momcilo KRAJISNIK and Radovan KARADZIC, initiated and implemented a course of conduct..."⁹¹ SDS and government authorities acting under the direction and control of Momcilo KRAJISNIK, Radovan KARADZIC and others were engaged in a variety of activities..."⁹² For Counts 1-6 of the Indictment, it alleges, "Between 1 July 1991 and 31 December 1992, Momcilo KRAJISNIK, acting individually or in concert with Radovan KARADZIC and others, planned, instigated..."⁹³

Radovan Karadzic, the President of RS, was so thoroughly demonized in the media and by Western governments that the Prosecution probably feels it can prove its case by merely showing a close relationship between Krajisnik and Karadzic. Alternatively, the Serbs were so thoroughly demonized that the Prosecution can argue that the government of the Bosnian Serbs was a criminal enterprise and, therefore, everyone who worked for the Bosnian Serb government was a criminal.

To a neutral outsider who was not prejudiced by the news media interpretation of the war, it may seem that the Prosecution has an uphill battle proving its case. However, the Prosecution does not need to convince an uninformed public, but rather a panel of three judges, who are familiar with the history of the break-up of Yugoslavia.

Most of the Prosecution's case so far has consisted of witnesses from various parts of Bosnia and

Hercegovina who have testified about alleged atrocities committed in their towns or villages. Some have testified about killings, others about imprisonment in detention camps. In an American courtroom, a defense attorney would object to admitting any evidence without a foundation linking the alleged evidence to the defendant. After-all, none of the witnesses said that Momcilo Krajisnik had killed anyone or ordered anyone to be killed. No one even alleges that Krajisnik had ever visited the places where the alleged crimes took place. For this purpose the Prosecution brought in "expert" witnesses, particularly Patrick Treanor, who had been working as a prosecution investigator. Treanor showed the court diagrams and a written statement, in addition to giving his courtroom testimony, which attempted to show that the SDS planned or ordered the alleged crimes. Treanor, then, argued that Momcilo Krajisnik played a decision-making role in the SDS, and was, therefore, responsible for planning and ordering those alleged crimes.⁶⁰

The Prosecution's case was still being heard in the Tribunal in fall 2004. The Prosecution intended to bring several more witnesses to testify about alleged crimes in various towns and villages. Probably, it will end its case around the end of 2004 or early 2005. After that, the Defense will have an opportunity to present its side of the story. Most likely, the trial will continue for one more year.

Notes:

1. Netherlands Institute for War Documentation (hereafter referred to by the Dutch abbreviation NIOD), *Srebrenica*, Part I, Chapter 1, Section 2
2. *Ibid.*
3. *The Prosecutor v. Momcilo Krajisnik, Biljana Plavsic, Prosecution's Pre-Trial Brief*, Case No. IT-00-39 & 40-PT, 2 May 2002
4. See, for example, Dedijer, Vladimir, *Vatikan i Jasenovac*, Rad, Beograd, 1987
5. NIOD, Prologue, Ch. 1, Sec. 5
6. Paul Shoup said, "The second highly detrimental event were (sic) the elections of November-December 1990, which marked the triumph of the three national parties (the SDA, the SDS, and the HDZ)." Shoup, Paul S., "Defense Submission of Expert Report," *The Prosecutor vs. Radoslav Brdanin*, Case No. IT-99-36-T, filed 23 January 2004, p. 15. Shoup said that the first highly detrimental event was the break-up of the Yugoslav League of Communists in January 1990 (page 14, *ibid.*)
7. Silber, Laura and Little, Allan, *Yugoslavia, Death of a Nation*, Penguin Books, New York, 1997, p. 211
8. NIOD, Part I, Ch. 3, Sec. 3
9. NIOD, Part I, Ch. 3, Sec. 5
10. NIOD, Part I, Ch. 5, Sec. 2; or Silber and Little, p. 205
11. *Ibid.*
12. Reuters, "Croatian leader Tudjman shrugs off atrocities," 6 October 1995; AP, "UN Notes Croatia Atrocities," 3 October 1995
13. Dobbs, Michael, "Balkan leaders OK Bosnia Pact," *Washingtonpost.com*, November 22, 1995, page A01, accessed at <http://www.washingtonpost.com/wp-srv/inatl/longterm/bosvote/pact.htm> on 2 December 2004
14. ICTY, "General Information," Fact Sheet on ICTY Proceedings, accessed at <http://www.un.org/icty/cases/factsheets/generalinfo-e.htm> on 12 Oct. 2004 (hereafter ICTY)
15. ICTY, "Overview of ICTY Cases," up until October 2004, there are indictments against 85 Serbs, 33 Croatians, 5 Muslims, and 4 Albanians
16. ICTY, "Overview of ICTY Cases," up until December 31, 1999, there were indictments against 60 serbs, 20 Croatians, and zero Muslims.
17. *Prosecutor v. Milan Babic*, Case No. IT-03-72-S, Judgment
18. Aziz, Shaista, "Bosnian Muslim wartime leader dies," *Aljazeera.Net*, 19 October 2003, accessed on 2 December 2004. "Tears for Croatian president," *BBC News*, 11 December 1999, accessed at <http://news.bbc.co.uk/1/hi/world/europe/559712.stm> on 12 December 2004. Purvis, Andrew, "Life After Tudjman," *Time Europe*, Vol. 154, No. 26, December 27, 1999, accessed at <http://www.time.com/time/europe/magazine/1999/1227/posttudjman.html> on 2 December 2004.
19. Nothing in either Indictment states specifically whom Momcilo Krajisnik had authority over. Both Indictments allege that the organizations Krajisnik was a member of--the SDS, the National Security Council, the Assembly, and the expanded Presidency--had authority. *The Prosecutor of the Tribunal Against Momcilo Krajisnik and Biljana Plavsic, Amended Consolidated Indictment*, Case No. IT-00-39 & 40-PT, 16 July 2001, and *The Prosecution of the Tribunal Against Momcilo Krajisnik, Amended Indictment*, Case No. IT-00-39-I, 16 July 2001
20. *Krajisnik, Amended Indictment*
21. *Ibid.*
22. *Statute Of The International Criminal Tribunal For The Former Yugoslavia*, Article 7(1)
23. *Krajisnik, Amended Indictment*, para. 4
24. *Krajisnik, Amended Indictment*, para. 2
25. *Krajisnik, Amended Indictment*, para. 4
26. *Krajisnik, Amended Indictment*, para. 5
27. *Krajisnik, Amended Indictment*, para. 6
28. *Krajisnik, Amended Indictment*, para. 7
29. *Krajisnik, Amended Indictment*, para. 10
30. Treanor, Patrick J., "The Bosnian Serb Leadership 1990-1992," Research Report prepared for the case of *Krajisnik & Plavsic*, Cases No. IT-00-39 and No. IT-00-40

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